

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

May 20, 2004

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IN RE:) Docket No ~~97-00309~~
BellSouth Telecommunications, Inc.'s Entry)
Into Long Distance (InterLATA) Service in)
Tennessee Pursuant to Section 271 of the)
Telecommunications Act of 1996)

04-00150

**RESPONSE OF COMPSOUTH TO BELL SOUTH'S MOTION FOR THE
ESTABLISHMENT OF A NEW PERFORMANCE ASSURANCE PLAN**

The Competitive Carriers of the South, Inc. ("CompSouth")¹ requests that the Tennessee Regulatory Authority dismiss, without prejudice, the Motion of BellSouth Telecommunications, Inc. ("BellSouth") for the Establishment of A New Performance Assurance Plan and that the agency schedule an industry-wide workshop to discuss and review Tennessee's current plan and what, if any, improvements should be made to the plan. In the alternative, CompSouth asks that the Authority allow those carriers wishing to respond to BellSouth's Motion at least sixty days to prepare and file comments. Following the filing of those comments, the Authority and the parties could then decide whether to conduct a workshop, a more formal proceeding, or a combination of the two. In support of this request, CompSouth submits the following.

As the Authority is well aware, the telecommunications industry is, for at least the next month, in a state of collective uncertainty. The resources of many CompSouth members are focused on negotiations with BellSouth and the legal and regulatory issues raised by these negotiations.

¹ The members of CompSouth requesting this rulemaking are Access Integrated Networks, Inc , Access Point Inc , MCI, Birch Telecom, Covad Communications Company, AT&T, NewSouth Communications Corp , Talk America, Nuvox Communications, Inc , ITC^DeltaCom, Xspedius Communications, Momentum Telecom, Inc , Network Telephone Corp , KMC Telecom, LecStar Telecom, Inc , Z-Tel Communications, Inc , and IDS Telcom LLC

In the middle of what can best be described as a crisis period in the industry, BellSouth has filed with the TRA a proposal for a wholesale redesign of the current performance measures and penalties plan which BellSouth agreed to adopt less than two years ago. The new plan, which BellSouth acknowledges the company has been working on "for some time," is more than one hundred pages long and appears to be completely different than the current plan. Furthermore, without consideration of how long it will take other carriers to file substantive responses to BellSouth's revised plan, BellSouth proposes to conduct an industry-wide workshop within two or three weeks after filing the plan.

The members of CompSouth intend to file, and are entitled to file, a comprehensive response to BellSouth's Motion to change the Authority's current plan.² Given the extensive nature of BellSouth's proposal and the fact that, especially for the smaller members of CompSouth, most of the in-house lawyers and subject matter experts are currently involved in interconnection related activities, BellSouth's suggested timetable for the workshop is a fantasy. At a minimum, CompSouth needs sixty days to respond to BellSouth's Motion. After those responses are filed, the Authority can then decide whether to conduct a workshop or to initiate a more formal proceeding.

Finally, CompSouth respectfully submits BellSouth's entire approach to whether Tennessee needs to change its current plan is misguided and inconsistent with the comments of Chairman Tate at the Authority's last agenda conference. The Chairman asked that interested parties submit comments regarding what procedures the Authority might follow in deciding what, if any, corrections need to be made to the current plan. In that context, an industry

² BellSouth's Motion was filed in Docket 97-00309, the same docket in which the Authority approved the agency's current performance measures and penalties plan in 2002. CompSouth agrees with BellSouth that any Motion to amend the current plan should be addressed in that docket, rather than initiating a brand new proceeding. Furthermore, the extensive record already established in that docket may assist the parties and the agency in evaluating BellSouth's proposal and deciding what, if any, changes need to be made in the current plan.

collaborative, similar to those held in other states, would be a useful way to begin. Such a workshop would involve a review of the current plan, its strengths and weaknesses, and possible amendments to improve the plan or make it more "Tennessee specific."

Rather than propose such a neutral workshop, BellSouth submits an entirely new plan and suggests a "collaborative" to review, not the current plan, but BellSouth's entirely new (and renamed) proposal. If BellSouth were truly interested in getting input from other segments of the industry about this issue, BellSouth would have proposed collecting such input before filing its Motion. BellSouth has put the cart before the horse and made it unlikely that a workshop can have any useful outcome.

The appropriate way to proceed in reaction to the Chairman's request is for the agency to dismiss, without prejudice, BellSouth's Motion as having been prematurely filed. In the absence of a formal pleading (which, upon filing, triggered all the contested case procedures in the agency's rules), the TRA could then schedule an informal workshop for the staff and the parties to discuss and review, in a neutral, non-adversarial manner, the current performance measures and penalties plan. In that setting, it is possible, if not probable, that the industry and staff can agree on improvements to the current plan. To the extent the participants cannot agree, any carrier would be free to make a formal motion for the agency's consideration or the agency itself could initiate formal proceedings.

For these reasons, CompSouth urges the TRA to dismiss BellSouth's Motion, without prejudice, and work with the industry to schedule a workshop (sometime after June 15, 2004). In the alternative, CompSouth requests sixty days to respond to the Motion and respectfully states that CompSouth cannot participate in any workshop on the schedule proposed by BellSouth.

Respectfully submitted,
BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____

Henry Walker

414 Union Street, Suite 1600
Nashville, Tennessee 37219
(615) 252-2363

Attorneys for Competitive Carriers of the South, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2004 a copy of the foregoing document was served on Guy Hicks, BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, Tennessee 37201, via electronically, US mail or hand delivery.


Henry Walker